



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA853

Notice of Availability for General Conservation Plans and Notice of Intent to Prepare Environmental Assessments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability of General Conservation Plans; and Notice of Intent to prepare Environmental Assessments; announcement of a public scoping meeting; request for comments.

SUMMARY: We, NMFS, announce our intent to conduct public scoping necessary to gather information to prepare General Conservation Plans (GCPs) for the Penobscot Bay, Merrymeeting Bay, and Downeast Coastal Salmon Habitat Recovery Units (SHRUs) and Environmental Assessments (EAs) under the National Environmental Policy Act (NEPA). The GCPs will provide a streamlined process by which dam owners that are not regulated by the Federal Energy Regulatory Commission (FERC) can obtain an incidental take permits (ITP) by conforming to specific measures in their respective GCP that minimize and mitigate impacts to Gulf of Maine Distinct Population Segment (GOM DPS) of Atlantic salmon (Salmo salar). The GCP will be implemented cooperatively by participating dam owners and NMFS. The EAs will analyze the environmental effects of the proposed issuance of ITPs under the Endangered Species Act of 1973 (ESA), as amended. We provide this notice to announce the initiation of a public scoping period, during which other Federal and State agencies, Tribes, and the public can provide suggestions and information on the scope of issues and range of alternatives to be addressed in the GCPs and EAs.

DATES: Please send written comments on or before [insert date 60 days after date of publication in the FEDERAL REGISTER]. A formal Public scoping meeting will be held on January 11, 2011. For the public meeting locations, see “Meeting” below.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0291, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0291 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail or hand-delivery: Assistant Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The GCPs and other pertinent information are also available electronically at the NMFS website at [http://www.nero.noaa.gov/prot\\_res/altsalmon/conservationplan/](http://www.nero.noaa.gov/prot_res/altsalmon/conservationplan/) and <http://www.nero.noaa.gov>.

MEETING: A public meeting will be held on January 11, 2011, from 12:30–5 p.m. at the Hilton Garden Inn, 250 Haskell Road, Bangor, ME.

FOR FURTHER INFORMATION CONTACT: David Bean, NMFS, Northeast Regional Office, Maine Field Station, 17 Godfrey Drive, Orono, ME 04473; 207-866-4172.

#### SUPPLEMENTARY INFORMATION:

##### Reasonable Accommodations

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact the National Marine Fisheries Service (NMFS) at the address above no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

##### Background

In accordance with section 10(a)(1)(B) of the ESA, we are preparing three individual GCPs to provide a streamlined process by which dam owners within the GOM DPS can obtain an incidental take permit. Section 9 of the ESA (16 U.S.C. 1538) and the implementing regulations prohibit the take of animal species listed as endangered or threatened. The term “take” is defined under the ESA (16 U.S.C. 1532) as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in such conduct. “Harm” is defined by Service regulation (50 CFR 17.3) to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Under section 10(a)(1)(B) of the ESA, NMFS may issue

permits to authorize “incidental take” of listed species, where the take is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32 and 50 CFR 17.22, respectively. If a permit is issued, participating dam owners would receive assurances for all species included on the ITP under the Service's “No Surprises” regulations (50 CFR 17.22 (b)(5) and 17.32 (b)(5)).

Section 10 of the ESA specifies the requirements for the issuance of ITPs to non-Federal entities. Any proposed take cannot appreciably reduce the likelihood of the survival and recovery of the species in the wild. The impacts of such take must also be minimized and mitigated to the maximum extent practicable. Typically, to obtain an ITP, an applicant must prepare a Habitat Conservation Plan (HCP) describing the impact that would likely result from the proposed taking, the measures for minimizing and mitigating the take, the funding available to implement such measures, alternatives to the taking, and the reason why such alternatives are not being implemented. NMFS is preparing three individual GCPs that describe the required protective measures and provides a regulatory structure for these specific conditions to occur. Individual private dam owners could receive ITPs by participating in the GCP process.

The specific objectives of the GCPs are to (1) provide for safe, timely, and effective passage for all relevant life stages of Atlantic salmon at each facility covered in the GCPs to promote recovery of the species; (2) provide full access to critical habitat with a habitat quality score of 2 or 3 (74 FR 29300; June 19, 2009) in the GOM DPS; (3) provide a mechanism for which authorized incidental take can be mitigated by requiring the applicant to provide additional funds which can be used to improve access to quality habitat within the GOM DPS;

and (4) provide a regulatory and permitting process for qualified dam owners to receive take authorization that minimizes time requirements for the applicant.

Owners of dams not regulated by FERC that are located within the GOM DPS would be eligible for participation in the GCPs. We are proposing to address only the federally endangered GOM DPS Atlantic salmon in the GCP for ITP coverage, although other Federally listed and special-status species are expected to benefit from activities conducted through the GCPs. Under the GCPs, ITPs would be issued to cover otherwise legal activities necessary to maintain or improve Atlantic salmon passage. Such activities include, but are not limited to: demolishing and removing a dam; rehabilitating riparian vegetation after dam removal; sediment removal upstream of a dam prior to removal; reconstructing the river channel after dam removal; and, constructing and maintaining upstream or downstream fishways. The GCPs would not allow for coverage of activities that are not specifically related to maintaining or improving Atlantic salmon passage.

Participating dam owners in the GCPs would have two options to minimize take of Atlantic salmon: (1) remove the dam; or (2) modify the dam such that it allows for upstream migration of adult Atlantic salmon during times of salmon migration. Dam owners utilizing minimization option two would also be required to pay a mitigation fee for ongoing impacts to fish passage that will result from continued dam presence. Specifically, dam owners would be assessed an annual mitigation fee which would be allocated to an individual GCP Adaptive Management Fund that would be used to improve fish passage at high priority locations in the respective SHRU. The annual fee would be calculated based on general information regarding the impacts of dams to Atlantic salmon passage and the quantity and quality of habitat upstream of the dam.

We intend for the GCPs to be effective for 50 years. For projects pursuing Minimization Option 1 (dam removal), individual ITPs would be valid for the duration of the GCPs if necessary, though in most cases all take should be eliminated by dam removal and long-term take issuance should not be needed. For projects pursuing Minimization Option 2 (modify dam to allow for fish passage), individual ITPs would be valid for 20 years and may be extended for additional terms if we determine that a dam has been, and remains, in compliance with the GCP's requirements.

#### Environmental Assessment

NEPA (42 U.S.C. 4321 et seq.) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the environmental review. Alternatives considered for analysis in an environmental document may include: variations in the scope of covered activities; variations in the location, amount, and type of conservation; variations in permit duration; or, a combination of these elements.

The EAs will consider the proposed action (issuance of ITPs through the GCP process), a no-action alternative (a scenario where there would be no issuance ITPs and dam owners would remain in violation of the ESA), and a reasonable range of alternatives that fit within the purpose and need as described by NMFS. The purpose of the proposed action is to provide a process for authorizing take of Atlantic salmon incidental to the removal of dams and the installation and maintenance of fish passage improvements for dams not regulated by FERC. The need for the proposed action is to provide a mechanism by which participating dam owners can comply with

section 9 of the ESA, which prohibits the take of ESA listed fish, wildlife, or plant species. A detailed description of the proposed action and alternatives will be included in each of the EAs.

The alternatives for analysis in the EAs may include, but are not limited to, development of individual HCPs for dam owners to receive take authorization for Atlantic salmon and development of regional HCPs developed by the State of Maine or local agencies (e.g., counties) to provide opportunities for dam owners to receive take authorization. The EAs will also identify potentially significant impacts on biological resources, land use, air quality, cultural resources, water resources, socioeconomics, and other resources in the human environment that may occur directly, indirectly, and/or cumulatively as a result of implementing the proposed action or any of the alternatives. Various strategies for avoiding, minimizing, and mitigating the impacts of incidental take will be considered.

We are furnishing this notice in accordance with 40 CFR 1501.7 and 1508.22 to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives they believe need to be addressed in the EAs. The primary purpose of the scoping process is to identify important issues raised by the public related to the proposed action.

Written comments from interested parties are requested to ensure that the full range of issues related to the proposed action is identified. Comments will only be accepted in written form.

#### Request for Public Comments

We seek comments concerning: (1) Atlantic salmon proposed for inclusion in the proposed GCPs, including information regarding its range, distribution, population size and population trends within the GOM DPS; (2) relevant data concerning the impacts of the proposed actions on Atlantic salmon; (3) any other environmental issues that should be considered with

regard to the proposed permit action; and (4) the information and range of alternatives to be included in the EAs.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and NEPA regulations (40 CFR 1506.6).

Dated: December 13, 2011.

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Marta Nammack, Acting Chief, Endangered Species Division, Office of Protected Resources,  
National Marine Fisheries Service.

[FR Doc. 2011-32287 Filed 12/15/2011 at 8:45 am; Publication Date: 12/16/2011]